

§ 134.306 Transmission of the case file.

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

§ 134.307 Service and filing requirements.

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.308 Limitation on new evidence and adverse inference from non-submission in appeals from size determinations.

(a) Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Service.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.305.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.310 Discovery.

Discovery will not be permitted in appeals from size determinations or SIC code designations.

§ 134.311 Oral hearings.

Oral hearings will not be held in appeals from SIC code designations, and will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of § 134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

The following sections from subpart B of this part apply to an appeal under this subpart C: § 134.207(a) (pertaining to amendments to pleadings); § 134.208 (Representation in cases before OHA); § 134.209 (Requirement of signature); § 134.210 (Intervention); § 134.211 (Motions); § 134.214 (Subpoenas); § 134.218 (Judges); § 134.219 (Sanctions); and § 134.220 (Prohibition against *ex parte* communications).

§ 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

§ 134.315 The record.

Where relevant, the provisions of § 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

§ 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision